[Service Date October 20, 2009]

# BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining the Proper	) DOCKET TV-091641
Carrier Classification of and Complaint	)
for Penalties against:	ORDER 01
	)
ACTIVE MOVING COMPANY, INC.,	) ORDER INSTITUTING SPECIAL
d/b/a ACTION MOVING CO., INC.	) PROCEEDING; COMPLAINT
	) SEEKING TO IMPOSE
	) PENALTIES;
	) and
	) NOTICE OF HEARING
	) (Set for November 20, 2009, at
	9:30 a.m.)

#### **INTRODUCTION**

- The Washington Utilities and Transportation Commission (Commission), pursuant to RCW 81.04.510, institutes this special proceeding on its own motion to determine whether Active Moving Company, Inc. d/b/a Action Moving Co., Inc. (Active) is engaging in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.070 and RCW 81.80.075.
- The Commission has information from which it believes and therefore alleges that Active is advertising, soliciting, offering, or entering into an agreement or agreements to transport household goods within the state of Washington without first having obtained a household goods carrier permit from the Commission.
- Pursuant to RCW 81.04.510, upon proof of the allegations set forth above, the Commission is authorized to issue an order requiring Active to cease and desist activities subject to regulation under Title 81 RCW. In addition, RCW 81.04.110 authorizes the Commission to file a complaint on its own motion setting forth any act or omission by Active that violates any law, or any order or rule of the Commission. The Commission may impose financial penalties of up to \$5,000 for each violation of RCW 81.80.075 shown. *See* RCW 81.80.075(4).

At the hearing in this special proceeding that will be conducted pursuant to Part IV of the Administrative Procedure Act (APA), RCW 34.05, of which notice is given here, the Commission will also consider its Complaint against Active alleging various violations of law as specified below and decide whether Active should be penalized.

#### ORDER AND NOTICE OF HEARING

- The Commission has jurisdiction to institute a special proceeding to determine whether Active is conducting business requiring operating authority, or has performed or is performing any act requiring Commission approval without securing such approval pursuant to RCW 80.01.040, RCW 81.80.070 and RCW 81.04.510. In addition to the foregoing statutes, this matter involves Title 81 RCW, including but not limited to RCW 81.01.010; RCW 81.04.020; RCW 81.80.070, and RCW 81.80.075. This matter also involves the administrative rules set forth in WAC 480-15 and WAC 480-07.
- IT IS HEREBY ORDERED that Active appear before the Commission in this special proceeding conducted under the authority of RCW 81.04.510 at 9:30 a.m. on Friday, November 20, 2009, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington, to give testimony and evidence under oath as to its operations. Active shall appear at the time and place set forth above unless the Secretary and Executive Director of the Commission, by notice of hearing, specifies a different time and place. This is ordered pursuant to the subpoena powers granted in RCW 34.05.446, RCW 80.01.060(1), and RCW 81.04.510.
- 7 **IT IS FURTHER ORDERED** that at the hearing in this special proceeding the burden of proving that the alleged operations are not subject to the provisions of Title 81 RCW shall be upon Active, as provided by RCW 81.04.510.
- 8 NOTICE IS FURTHER GIVEN THAT ANY PARTY WHO FAILS TO ATTEND OR PARTICIPATE IN THE HEARING SET BY THIS NOTICE, OR ANY OTHER STAGE OF THIS PROCEEDING, MAY BE HELD IN DEFAULT IN ACCORDANCE WITH RCW 34.05.440 AND WAC 480-07-450.

If a limited English-speaking or hearing-impaired party needs an interpreter, a form is attached to this notice to be filled out and returned as indicated, so that a qualified interpreter may be appointed at no cost to the party or witness.

The names and mailing addresses of all parties and their known representatives are shown as follows:

Carrier: Thomas Shanks

Active Moving Company, Inc. 10002 Aurora Ave. N. #596

Seattle, WA 98133

Representative: Unknown

Commission: Washington Utilities and

**Transportation Commission** 

1300 S. Evergreen Park Drive S.W.

P.O. Box 47250

Olympia, WA 98504-7250

(360) 664-1160

Representative: Jennifer Cameron-Rulkowski

**Assistant Attorney General** 

1400 S. Evergreen Park Drive S.W.

P.O. Box 40128

Olympia, WA 98504-0128

(360) 664-1186

## **COMPLAINT SEEKING PENALTIES**

#### **PARTIES**

- 11 Complainant, the Washington Utilities and Transportation Commission, is an agency of the State of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including household goods carriers, under the provisions of Title 81 RCW.
- Respondent, Active Moving Company, Inc. d/b/a Action Moving, Co., Inc. is a corporation doing business in the state of Washington.

#### **JURISDICTION**

The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, RCW 80.04.110, RCW 81.04.160, RCW 81.04.460, RCW 81.80, and RCW 81.80.075.

# **BACKGROUND**

- Thomas Shanks is the president and majority shareholder of Active Moving Company, Inc. Mr. Shanks recently filed a name change with the Washington Secretary of State's Office to change the name "Action Moving Company, Inc." to "Active Moving Company, Inc." Active Moving Company, Inc. is licensed with the Secretary of State's Office to do business as "Action Moving Co., Inc."
- Mr. Shanks has operated "Action Moving Company, Inc." for many years without a permit. The Commission issued a cease and desist order and a penalty against Thomas Shanks d/b/a Action Moving Company, Inc., on January 24, 2000, in Penalty Assessment No. 99765, for transporting household goods within the state of Washington for compensation without a Commission permit.

<sup>&</sup>lt;sup>1</sup> Action's Web site states, "As Action Moving we have been in operation for over 15 years." http://www.actionmovingcompany.com/index.html.

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In June of 2008, the Commission received evidence that Action had conducted a recent residential move in Seattle. With this evidence, the Commission filed a petition in King County Superior Court to enforce the cease and desist order against Action and Mr. Shanks.<sup>2</sup> Mr. Shanks paid his outstanding penalty to the Commission on February 13, 2009, and filed an application with the Commission for a permit to transport household goods on March 16, 2009.

- The Commission and Mr. Shanks agreed to settle the court case and jointly filed a consent decree that was entered in King County Superior Court on April 4, 2009. The consent decree included an injunction that enjoins Action and Thomas Shanks from transporting or holding themselves out to transport household goods without a Commission permit.<sup>3</sup>
- On July 10, 2009, the Commission received an e-mail from Mr. Shanks, seeking to withdraw Active's household goods permit application. In his e-mail message, Mr. Shanks stated:

Do [sic] to the economy and very slow business we find it difficult to try and run a moving business with trucks in the [S]eattle area. In fact we are trying to sell our trucks. The operating costs for fuel, insurance and maintenance is [sic] not helping our situation. We are still offering a load and unload service to the public and repeat customers with out [sic] the use of our trucks and if the customer rents there [sic] own truck. [O]ur website states this clearly that we offer a loading and unloading service (only). [Y]ou can see the information at

Defendants and all successors, assigns, and transferees are hereby enjoined and permanently restrained in the state of Washington from directly or indirectly engaging in any of the following conduct:

- a. Holding themselves out to provide, contracting for, undertaking to provide, or providing intrastate transportation of property, including household goods, for compensation over the highways of the state of Washington without the required authority from the Washington Utilities and Transportation Commission to provide such transportation services.
- b. Advertising, in any medium, for the undertaking of intrastate transportation of household goods without the required authority from the Washington Utilities and Transportation Commission to provide such transportation services.

<sup>&</sup>lt;sup>2</sup> King County Superior Court Cause No. 09-2-07007-5 KNT, Washington Utilities & Transportation Commission v. Thomas Shanks, Action Moving Company, Inc.

<sup>&</sup>lt;sup>3</sup> The consent decree provides as follows at section 3.1:

www.actionmovingcompany.com. I thank you for your time on all of this, however the business is not good right now and to pursue further only to fail in the moving business would make no sense at this time. I would like to possibly pursue a moving permit in the future should the reality [sic] market and moving business should [sic] return back to normal.

- On August 31, 2009, Commission Staff telephoned Active and experienced no trouble making arrangements for a move of household goods from North Seattle to Renton.
- Despite Mr. Shanks' representations in his email of July 10 that "our website states ... clearly that we offer a loading and unloading service (only)," Active is advertising household goods moving services at <a href="www.actionmovingcompany.com">www.actionmovingcompany.com</a>. Text on the Web site describing the company's services, such as "Your Quality Seattle Mover Load & Unload Services" can be read as offering full-service moving service. In addition, the Web site continues to show a photo of a truck painted with the company's name; and such an image implies that Action transports household goods in this truck.
- By holding the company out to provide in-state moving services, Mr. Shanks and Active have violated the consent decree that Mr. Shanks signed. According to the terms of the consent decree, such a violation may be a "basis for further enforcement proceedings, including, but not limited to contempt of court proceedings."

#### APPLICABLE LAW AND REGULATION

- Under state law, the definition of "household goods carrier" includes a person who "advertises, solicits, offers, or enters into an agreement to transport household goods" within the state of Washington. *RCW* 81.80.010(5).
- The term "person" can mean a firm as well as an individual. *RCW* 81.04.010(6). Specifically included in this term are companies, corporations, and partnerships. *WAC* 480-15-020.

<sup>&</sup>lt;sup>4</sup> King County Superior Court Cause No. 09-2-07007-5 KNT, Washington Utilities & Transportation Commission v. Thomas Shanks, Action Moving Company, Inc., Consent Decree at section 6.2.

- The Commission defines household goods as "the personal effects and property used, or to be used, in a residence" in the context of transportation from one residence to another, or to a storage facility. WAC 480-15-020.
- Household goods carriers are common carriers. *RCW* 81.04.010(11). For the purposes of Title 81 RCW, every common carrier is a public service company. *RCW* 81.04.010.
- It is illegal to engage in business as a household goods carrier within the state of Washington without first obtaining a household goods carrier permit from the Commission. *RCW* 81.80.075(1).
- Any person who engages in business as a household goods carrier in the state of Washington without the required permit is subject to a penalty of up to five thousand dollars per violation. *RCW* 81.80.075(4). If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation. *RCW* 81.80.075(4)(a).
- When deciding the amount of the penalty to be ordered for engaging in business as a household goods carrier without a household goods carrier permit, the Commission must consider (1) the carrier's willingness to comply with the requirements of RCW 81.80.070 and the Commission's household goods carrier rules; and (2) the carrier's history of compliance with the provisions of RCW 81.80.075. *RCW* 81.80.075(4)(b).
- The Commission is authorized to file a complaint on its own motion setting forth any act of omission by any public service company that violates any law or any order or rule of the Commission. *RCW* 81.04.110.

#### COMPLAINT

- The Commission, through its Staff, re-alleges the allegations contained in paragraphs 14 through 29 above.
- Active has violated RCW 81.80.075(1) by offering, on August 31, 2009, to transport household goods for compensation from North Seattle, Washington, to Renton,

Washington, and by advertising its household goods moving services on the Internet at its Web site, <a href="www.actionmovingcompany.com">www.actionmovingcompany.com</a>, without first having obtained a household goods carrier permit from the Commission.

#### **REQUEST FOR RELIEF**

Staff requests that the Commission, pursuant to its authority under RCW 81.80.075(4), assess penalties of five thousand dollars against Active for each violation of RCW 81.80.075(1).

#### PROBABLE CAUSE

Based on a review of the Declaration of Sharon Wallace and other documents, and consistent with RCW 80.01.060 and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

## **NOTICE OF HEARING**

THE COMMISSION GIVES NOTICE That it will conduct a hearing concerning this Complaint concurrently with the special proceeding noticed above, which will commence at 9:30 a.m. on Friday, November 20, 2009, in Room 206, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. Administrative Law Judge Dennis J. Moss, from the Utilities and Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250, is designated to preside at the hearing of these matters.

DATED at Olympia, Washington, and effective October 20, 2009.

ANN E. RENDAHL
Director, Administrative Law Division,
Administrative Law Judge

Inquiries should be addressed to:

Executive Director and Secretary Washington Utilities and Transportation Commission Richard Hemstad Building 1300 S. Evergreen Park Drive S.W. P. O. Box 47250 Olympia, WA 98504-7250 (360) 664-1160

## **NOTICE**

PLEASE NOTE: The hearing facilities are accessible to interested people with disabilities; that smoking is prohibited; and, if limited English-speaking or hearing-impaired parties or witnesses are involved in a hearing and need an interpreter, a qualified interpreter will be appointed at no cost to the party or witness.

The information needed to provide an appropriate interpreter or other assistance should be stated below and returned to Washington Utilities and Transportation Commission, Attention: David W. Danner, 1300 S. Evergreen Park Drive SW, P.O. Box 47250, Olympia, WA 98504-7250. (PLEASE SUPPLY ALL REQUESTED INFORMATION)

Docket:	
Case Name:	
Hearing Date:	Hearing Location:
Primary Language:	
Hearing Impaired: (Yes)	(No)
Do you need a certified sign language in	terpreter?
Visual	Tactile
Other type of assistance needed:	
English-speaking person who can be cor	ntacted if there are questions:
Name:	
Address:	
Phone No : ( )	